withdrawal of several petitioners, even though there remain less than the number requisite to start the action. *In re Election of Prothonotary*, 3 Pa. L. J. 160. More sound seems the reasoning of those cases which hold that an election contest is a matter of public interest, not to be frustrated by a few, and hence it is proper for the court to deny those few leave to discontinue, lest by such discontinuance the court lose jurisdiction. *Contested Election of Grim*, 14 Wkly. Notes Cas. (Pa.) 303. *Cf. Mann* v. *Cassidy*, 1 Brewst. (Pa.) 11, 43.

ESTOPPEL — ESTOPPEL IN PAIS — ESTOPPEL OF ONE WHO ACTS IN A REPRESENTATIVE CAPACITY. — The defendant, being insolvent, executed a deed of trust preferring certain creditors. One of these creditors, a corporation, signed the deed through the plaintiff, its vice-president. The plaintiff was himself a creditor of the defendant. *Held* (by an equally divided court), that he is estopped to attack the deed. *Forbes* v. *Bowman*, 70 S. E. 165 (S. C.).

Purporting to act in a representative capacity implies three statements by the actor as an individual the truth of which he cannot deny: (1) the fact of acting as a representative; (2) the right so to act; (3) the absence, so far as he knows, of a property right in another which the transaction supposes to be in the person represented. Beyond that his acts are those of another, he being merely an "assistant." Unless his conduct amounts to a representation as to his own relation to the subject-matter, he cannot be charged, as an individual, with the acts done. *Wright* v. *De Groff*, 14 Mich. 164. If it is such a representation, it creates a personal estoppel. Thus an agent selling property represents that in so far as he knows he has himself no title in it, and so may not assert such a title against the grantee if it existed before the sale. *American Freehold Land Mortgage Co.* v. *Walker*, 119 Ga. 341. But he may, if it was subsequently acquired. *Chapman* v. *Gates*, 54 N. Y. 132. In the principal case, all the representations implied from the plaintiff's signing the deed were true. His "assisting" the corporation to sign the deed was no representation as to his own position regarding the deed. Nor could his silence be regarded as such a representation to the defendant, since the only duty to speak which he might have existed toward his principal and not toward the debtor or the other creditors.

EXECUTORS AND ADMINISTRATORS — ADMINISTRATION BONDS — LIABILITY OF FOREIGN ADMINISTRATOR. — A Tennessee administrator removed funds of the estate to Mississippi, where he resided, and failed to account for them. In Mississippi suit on the Tennessee administration bond was begun against him and his sureties. *Held*, that the suit may be maintained. *Cutrer* v. *State of Tennessee ex rel. Leggett*, 54 So. 434 (Miss.). See NOTES, p. 664.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ENJOINING ENFORCEMENT OF MUNICIPAL ORDINANCE. — The plaintiff sued in a federal court to enjoin the enforcement of a municipal ordinance, alleging an infringement of the Fourteenth Amendment. The state constitution likewise contained a provision against deprivation of life, liberty, or property without due process of law. *Held*, that no federal question is raised until the validity of the ordinance is sustained by the highest court of the state to which the question may be taken. *Seattle Electric Co.* v. *Seattle, Renton & Southern Ry. Co.*, San Francisco Recorder, Feb. 14, 1911 (C. C. A., Ninth Circ.).

Two lines of decisions as to the legal effect of municipal ordinances are to be found, the first holding that where an ordinance is enacted in pursuance of legislative authority, it is state action within the Fourteenth Amendment. *St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S. 142, 148. The other holds that a municipal ordinance not passed under supposed legislative authority cannot be regarded as state action within the constitutional prohibition. *Hamilton*

Gas Light and Coke Co. v. *Hamilton City*, 146 U. S. 258. The decision in the main case that it is not state action until held valid by the highest court of the state is therefore unsupported by the authorities, and is due possibly to the court's failure to note that the distinction is made between authorized and unauthorized action and not between lawful and unlawful action under the state constitution. Generally one attacking unconstitutional state legislation need not first pursue his remedy in the state courts; although where a carrier complains of rates fixed by a state commission he must exhaust the remedies provided by the statute before applying to the federal courts. See 22 HARV. L. REV. 368. The main case in requiring a similar procedure in the case of municipal ordinances reaches a desirable result but is wholly unsupported by the decisions.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ORIGINAL JURISDICTION WHEN STATE IS A PARTY. — The Constitution of the United States gives the Supreme Court original jurisdiction in cases in which a state is a party. Oklahoma brought an original bill in this court to enjoin the defendant railroad from charging certain alleged excessive freight rates in Oklahoma. The railroad demurred. *Held*, that the Supreme Court here has no original jurisdiction. *State of Oklahoma* v. *Atchison, Topeka & Santa Fé Ry. Co.*, 31 Sup. Ct. Rep. 434.

The State of Oklahoma brought an original bill in the Supreme Court to enjoin numerous common carriers from shipping intoxicating liquors into Oklahoma in violation of her constitution and laws. *Held*, that the Supreme Court here has no original jurisdiction. *State of Oklahoma* v. *Gulf, Colorado & Santa Fé Ry. Co.*, 31 Sup. Ct. Rep. 437.

These cases illustrate the unsuccessful attempt of a state to employ the Supreme Court, by virtue of the broad language of the Original Jurisdiction clause of the Constitution, as a tribunal of first resort in the enforcement of its laws. No property right of the state is here sought to be protected; the real parties in interest are certain citizens, and the primary purpose is to shield them against a violation of the state laws by the defendants. A state cannot thus ask relief when it seeks chiefly to vindicate the wrongs of individuals or to enforce its laws against wrongdoers generally. *Louisiana* v. *Texas*, 176 U. S. 1, 19, 22. The second case is rested on the additional ground that the state is in substance attempting to enforce a local penal law in the courts of another jurisdiction. Such an action cannot be maintained. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265. It is clear that the practical result of a different determination of the principal cases would be to overwhelm the Supreme Court with similar litigation.

HUSBAND AND WIFE — MUTUAL RIGHTS, DUTIES, AND LIABILITIES — HUSBAND'S POWER TO DISPOSE OF COMMUNITY PROPERTY AS A VESTED RIGHT. — Under the law of New Mexico a husband had the uncontrolled power to dispose of community property. A statute declared that no future conveyance of such property should be valid unless the wife joined in the deed. It was contended that the law could not constitutionally apply to community property already acquired, as that would deprive the husband of property without due process of law. *Held*, that such construction is constitutional. *Arnett* v. *Reade*, 31 Sup. Ct. Rep. 425. See NOTES, p. 652.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — "NET VALUE" OF POLICY. — A Missouri statute provided that no life insurance policy should be forfeited for the non-payment of premiums, but that three-fourths of its net value at the time of default should be used to purchase temporary insurance. The insured died three years after default. *Held*, that the